

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO. 105 OF 2006.

The Bombay Diocesan Trust Association Pvt.Ltd. a company registered under the provisions of the Companies Act, 1913 and deemed to be registered under the provisions of the Companies Act, 1956 and a Public Charitable Trust, registered under the provisions of the Bombay Public Trust Act, 1950, having its registered office at 19, Hazarimal Somani Marg, Fort, Mumbai 400 001.

... Petitioner.

Versus.

1. The Pastorate Committee of the Saint Andrews Church having its office at 3, Meghraj Seth Marg, Opp: Jhula Maidan, Agripada, Mumbai 400 011.

... Respondents.

And

1. Michael Makasare of Mumbai, Indian Inhabitant residing at BIT Block No.11, 2nd floor, Room No.55, Agripada, Mumbai 400 011.
2. Richard Barde of Mumbai, Indian Inhabitant residing at BIT Blocks, Block No.6, Room No.36, 1st floor, Agripada, Mumbai 400 011.
3. Danny Barde of Mumbai, Indian Inhabitant residing at BIT Blocks, Block No.6, 1st floor, Agripada, Mumbai 400 011.
4. Sandeep Gaikwad of Mumbai, Indian Inhabitant residing at Central Railway Hospital Quarters, MSRB-II, Bldg.No.291/7, Off Victoria Garden, Byculla, Mumbai 400 027.
5. Reuben Makasare of Mumbai, Indian Inhabitant, residing at BIT Blocks No.11, 2nd floor, Room No.55, Agripada, Mumbai 400 011.

6. Lalita Vanjare of Mumbai, Indian Inhabitant, residing at BIT Blocks No.8, 2nd floor, Agripada, Mumbai 400 011.
7. Ashok Manvar of Mumbai, Indian, Inhabitant, residing at 19, Hazarimal Somani Marg, BDTA Pvt.Ltd.Compound, Fort, Mumbai 400 001.
8. Pravin Bhosale of Mumbai, Indian Inhabitant, residing at Tilak Nagar, Bldg.No.28, Near Sarabai Cinema, Chembur, Mumbai.
9. Kantish Ahir of Mumbai, Indian Inhabitant, residing at Dhun Castle Bldg., 3rd floor, Clare Road, Mumbai 400 008.
10. Vijay Patil of Mumbai, Indian Inhabitant, residing at Police Quarters, 3rd floor, Byculla, Mumbai.
11. Michael Barde of Mumbai, Indian Inhabitant, residing at BIT Block No.8, 2nd floor, Agripada, Mumbai 400 011.
12. Ravikant Gaikwad of Mumbai, Indian Inhabitant, residing at BIT Block No.6, 2nd floor, Agripada, Mumbai 400 011. ... Respondents/Contemnors.

WITH

**CIVIL APPLICATION NO. 178 OF 2006
IN
CONTEMPT PETITION NO. 105 OF 2006**

The Bombay Diocesan Trust Association Pvt.Ltd.	... Applicant.
Versus.	
The Pastorate Committee of the Saint Andrews.	... Respondent.
And	
Machael Makasare & others.	... Respondents/Contemnors.

Shri Vijay Thorat, Senior Advocate and Shri S.L.Shah

i/by M/s.Shah & Legal for the Petitioner/Applicant.
Shri Suresh Gole for Respondents Nos.1 to 13.

CORAM : ABHAY S.OKA, J.

DATED : 25th June, 2007.

ORAL JUDGMENT.:

1. By this Contempt Petition the Petitioners have alleged that the Respondents/Contemnors have committed a deliberate breach of the order dated 26th July 2005 passed by this Court in Appeal from Order No.685 of 2005. Civil Application No.178 of 2006 is filed by the Petitioner in the Contempt Petition praying for initiating suo-motu action against the Contemnors for the alleged aggravated contempt. In the main Contempt Petition, on 14th March 2006 this Court directed that notice shall be issued to the Contemnor Nos.1 to 12 (Respondents in the Contempt Petition). In Civil Application No.178 of 2006, a show-cause notice was issued by this Court on 20th February 2007 by observing that the Respondents have by their acts of commission and omission, committed aggravated contempt of Court.

2. It will be necessary to refer to the facts of the case in brief. The Petitioner is a company deemed to be registered under the provisions of the Companies Act, 1956 and a public charitable Trust duly registered under the Bombay Public Trust Act, 1950. The Petitioner

claims to be owners of the properties situated at Sr.Andrew High School, Meghraj Sethi Marg, Agripada, Mumbai 400 011. On the ground floor of the said property, a school is being run and on the first floor there is a church. According to the case of the Petitioner on the ground floor there is a hall where classes are held in 7 separate class rooms which are made by erecting wooden partitions. The open space in front of the hall is used by the School as a playground and for conducting other extra curricular activities. According to the case of the Petitioner, the hall is also used for Church functions and other meetings of the Church only on Sundays and holidays to ensure that the functioning of the School is not affected. The case of the Petitioner is that the School is being conducted in two separate shifts. The first shift is from 7.15 a.m. to 12.20 noon and the second shift is from 12.50 p.m. to 5.40 p.m.

3. According to the case of the Petitioner, some time in the year 1997 in the open space, a stage was constructed with two rooms and a urinal. The same was constructed to be used as a welfare centre.

4. The 1st Respondent in the Contempt Petition is the Pastorate Committee of the Saint Andrews Church which is stated to be an unregistered organisation. It

is stated that the persons named as the Contemnors in this petition are claiming to be Pastorate Committee Members. According to the case of the Petitioners, Respondent No.1 in the petition started misusing the school premises. The hall was being let out to outsiders by collecting huge sums of money from the outsiders. It was stated that the members of the Pastorate Committee were using the hall for parties at night and even liquor was served.

5. A Civil Suit was filed being Suit No.2672 of 2001 by the Petitioner against Contemnors Nos.2, 3, 4, 5 and 6. On 5th February 2003, the learned Judge of the City Civil Court, Mumbai, granted injunction restraining the Defendants from entering into or holding any function or meeting in the hall of St.Andrews High School and from creating any nuisance of whatsoever nature in the said hall on the ground floor and they were also restrained from obstructing the Petitioner and the authorities of St.Andrews High School for conducting the school in the said hall. An Appeal was preferred against the order of injunction by the Defendants in the said suit. The said Appeal was disposed of in terms of the consent minutes of order dated 2nd May 2003.

6. According to the case of the Petitioner, it decided to use the welfare centre stage and the two

rooms for conducting classes and the place adjoining the hall was used as a staff room. As the Respondents prevented the Petitioner from using the welfare centre stage room for conducting classes and as the Respondents threatened the members of the staff of the school, the Petitioner filed another suit bearing No.2034 of 2005 in the City Civil Court at Mumbai. On 28th April 2005, the learned trial Judge passed an ad-interim order in terms of prayers in the Notice of Motion. The said Court directed the Respondents to remove their locks put on the welfare centre. It is the case of the Petitioners that though the lock put to the welfare centre was removed, the locks put on the two rooms forming part of the welfare centre were not removed. By further order dated 6th June 2005 the learned trial Judge directed the Respondents to remove locks on the two rooms and the toilet. An Appeal was preferred by the Defendants in the said suit before this Court. The Appeal was heard and disposed of by this Court by order dated 26th July 2005. This Court passed the following order in the Appeal from Order and the said Appeal was disposed of in terms of the said order:

3. The Appeal is, therefore, disposed off by the following directions:

(a) The pending notice of motion be heard and

decided on its own merits as expeditiously as possible and preferably by 31st October 2005.

- (b) The defendants shall not in any way disturb the functioning of the school between 7 a.m., to 6 p.m. on all the school days.
- (c) The plaintiff shall not object to holding the community functions as stated hereinabove on Saturdays and Sundays or any other holidays and the consideration received for such functions shall be accounted by the party concerned by issuing an official receipt.
- (d) In case the hall and the welfare centre and the adjacent two rooms have been locked by any of the parties, the same shall be opened forthwith and none of the parties shall resort to such method, except that the concerned management will lock the premises during night.
- (e) The plaintiff as well as the defendants will be bound by the above directions

during the pendency of the notice of motion."

While passing the said order, the learned Judge observed that the 1st Respondent-Committee may hold some community functions but not weddings or wedding receptions. The order provided that the functions like naming ceremonies, birthday parties (without any alcoholic drinks being served) and other religious functions may be held.

7. The learned Counsel appearing for the Petitioner has invited my attention to the material averments made in the petition. According to the learned Counsel the material averments of commission of contempt have been made in paragraphs Nos.36, 42, 45, 53 and 59. The relevant portions of the said paragraphs read thus:

"36. The Petitioners say that on or about 19th June 2005, the lock put up by the Petitioners on the stage of the Welfare Centre, was broken open at the instance of the Respondents/Contemnors, and the Petitioners furniture and other items which were in the stage were removed at the instance of the Respondents/Contemnors, and the Respondents/Contemnors, in complete disregard to the Orders dated 28th April 2005 and 6th June 2005 passed by

Her Honour Judge Smt.R.S.Dalvi, have put up their own lock on the Welfare Centre stage. The Respondents/Contemnors have also not removed the locks put up by them on the two rooms and toilet of the Welfare Centre.

42. The Petitioners say that in total disregard and contempt of the Order dated 26th July 2005 passed by His Lordship Mr.Justice Marlapalle, on or about 14th August 2005, some members of the Respondents removed some items of furniture belonging to the Petitioners which were being used for the school, and put up their locks on the Welfare Centre stage and the two rooms adjoining the said stage.

45. The Petitioners say that the Respondents have kept certain things/articles belonging to the Respondents in the two rooms adjoining the Welfare Centre stage and the two rooms adjoining the said stage in order to enable the Applicants to run the school classes. Hereto annexed and marked Exh.L is a copy of the said letter.

53. The Petitioners state that since the order dated 19th October 2005 has been stayed, the order passed by His Lordship the Hon'ble Mr.Justice

Marlapalle continues to operate. The Petitioners say that inspite of the order dated 22nd December 2005 passed by His Lordship the Hon'ble Mr. Justice Kamdar, the Respondents/Contemnors have not opened the locks put up by them on the stage and two rooms of the Welfare Centre.

59. The Petitioners say that because the Respondents/Contemnors have failed to comply with the aforesaid Orders and have not opened the locks put up by them on the stage and two rooms of the Welfare Centre and have also not removed their articles from the said two rooms of the Welfare Centre, the students have to face grave hardships. The Petitioners say that the students now have to sit in a small place and in cramped conditions since the stage has been locked by the Respondents/Contemnors. The Petitioners say that as a result, the student's education is severely affected."

8. There are affidavits filed in the contempt petition. When this contempt petition came up on board on 3rd August 2006 the following order was passed by this Court:

"2. During the course of hearing, as I indicated my mind, Mr.Gole on instructions of

the respondents-contemnor, who are present in Court, states that the respondents-contemnors are willing to abide by the directions given in the order dated 26th July 2005 in A.O.No.685 of 2005, in its letter and spirit. As this assurance is given on behalf of respondents-contemnors to this Court, in my opinion, the appropriate course is to defer hearing of the petition for some time to observe the conduct of the respondents-contemnors. It is made clear that even if one complaint regarding breach of any of the conditions is reported and is established before this Court, the Court will proceed to initiate action for aggravated contempt by issuing suo-motu notice in that behalf. Accordingly, hearing of the petition is deferred till 3rd week of February 2007. Assurance given by the respondents-contemnors in the Court is accepted. Counsel for the respondents also assures this Court to take immediate steps to remove articles lying in the two rooms adjacent to the Welfare Centre and these articles will be shifted to the Peons Room which is within the Church premises. Mr.Thorat for the petitioner submits that the articles can be disposed of

and if required, can be stored in the church itself. It is not possible to accept this submission unless there is enough material to hold that articles are not valuable articles and can be stored at any place. The order passed on the earlier occasion is kept in abeyance till the next date of hearing."

In the Civil Application No.178 of 2006, an allegation has been made by the Petitioners that the breach of order dated 3rd August 2006 has been made by the contemnors and therefore, it has become a case of aggravated breach. It is alleged in the application that the contemnors have failed and neglected to remove all the articles from the two rooms of the welfare centre. It is alleged that the contemnors have committed serious contempt by giving the welfare centre on hire for weddings on various dates mentioned therein and in fact it was let out for holding wedding of persons belonging to Mohammedan community.

9. The learned Counsel appearing for the Petitioner has taken me through the averments made in the petition as well as the averments made in the Civil Application. He submitted that even going by the affidavits filed by the contemnors, this is a clear case of breach of order passed by this Court. He submitted that an action

deserves to be taken against the Respondents. The learned Counsel appearing for the contemnors has invited my attention to the affidavits and the various materials placed on record.

10. I have considered the submissions. As stated earlier, the learned Counsel for the Petitioner has relied upon the averments made in paragraphs Nos.36, 42, and 45 of the Contempt Petition. In paragraph 36 it is alleged that on 19th June 2005 the lock put up by the petitioner to the stage of the welfare centre was broken open at the instance of the Respondents/ contemnors in complete disregard to the orders dated 28th April 2005 and 6th June 2005 passed by the learned trial Judge. It is alleged that the Respondents have put up their own locks and have not removed the locks put by them on the two rooms and the toilet block of the welfare centre. In the order dated 14th March 2006 by which notice was issued to the contemnors, it is stated that the notice is issued on the basis of the breach of directions contained in clauses (b) to (d) of order dated 26th July 2006 passed by this Court. If the Petitioner has any grievance about the breach of ad-interim orders passed by the trial Court, the Petitioner can always take appropriate proceedings under Rule 2(A) of Order XXXIX of the Code of Civil Procedure, 1908.

11. The allegation in paragraph 42 is that on 14th August 2005 some members of the Respondents removed some items of furniture belonging to the Petitioner. In the said paragraph there is no specific allegation as against any particular person named as contemnors in the Contempt Petition. The allegation is vague which indicates that some members of the Respondents i.e. Pastorate Committee of St.Andrews Church have removed some furniture and have put up their locks. Therefore, there is no specific allegation made in the said paragraph as against the contemnors who are impleaded in this petition. On the basis of such a vague allegation, penal action cannot be taken against the Contemnors.

12. In paragraph 45 there is an allegation that the Respondents have kept certain things and articles belonging to the Respondents in two rooms adjoining to the welfare centre stage as a result of which the Petitioner is not unable to beneficially use the said rooms. It must be stated here that the Petitioners have not set out the description of things/articles kept in the said rooms. This is a general allegation made against the Respondents. As stated earlier, the Pastorate Committee of St.Andrews Church is impleaded as the Respondent and twelve other persons are impleaded as contemnors. The Petitioner wants this Court to punish the contemnors on the basis of such vague allegations.

Action cannot be taken under the Contempt of Court Act against the contemnors on the basis of such allegations. Again in paragraph 53 there is a general allegation that the "Respondents/contemnors" have not opened the locks put up by them on the stage and the two rooms of the welfare centre. It must be noted here that in paragraph 42 of the petition a very vague allegation has been made that some "members" of the Respondents have put up their locks on the welfare centre and the two rooms.

13. It will be necessary to refer to the allegations made in the Civil Application No.178 of 2006. In paragraph 5 of the Application it is alleged that the contemnors have given the welfare centre on hire for wedding and wedding receptions on the dates specified therein. In paragraph 6 there is an allegation made that the contemnors have put up their locks on the stage and they are not permitting the Applicants to put up their locks to the welfare centre stage and the two rooms. It is alleged that the contemnors have not removed the articles from the rooms. There are affidavits filed by one Shri Pravin Bhosale, Secretary of Pastorate Committee of the St.Andrews Church denying various averments made. There are counter affidavits filed on the side of the Petitioner.

14. It will be necessary to refer to the order dated

26th July 2005 passed by this Court. It must be borne in mind that in clause (d) of paragraph 2 of the said order, it is stated thus:

"(d) In case the hall and the welfare centre and the adjacent two rooms have been locked by any of the parties, the same shall be opened forthwith and none of the parties shall resort to such method, except that the concerned management will lock the premises during night."

The said order indicates that if the hall and the welfare centre and the adjacent two rooms have been locked by any of the parties, the same shall be opened forthwith and none of the parties shall resort to such method. There are no specific averments made both in the contempt petition and the civil application attributing a particular role to the 12 persons named as contemnors. The Petitioner themselves are not sure as to which of the contemnors have allowed wedding functions and receptions to be held at the welfare centre. Considering the nature of proceedings under the Contempt of Court Act, 1971 on the basis of such averments it is not possible to take action against the concerned Respondents under the Contempt of Court Act, 1971. It must be borne in mind that the order dated

26th July 2005 has been passed in an Appeal arising out of the order dated 28th April 2005 passed by the trial Court which is only an ad-interim order pending final disposal of a Notice of Motion for interim relief. This Court while passing the order has directed disposal of the Notice of Motion for interim relief. Thus the breach alleged is of an ad-interim order. It must be noted here that it is an unfortunate dispute between two religious bodies namely the Bombay Diocesan Trust Association and the Pastorate Committee of St.Andrews Church. The contemnors are associated with the Respondent-Pastorate Committee.

15. Taking an overall view of the matter this is not a fit case where action under the Contempt of Court Act can be taken. Hence the following order is passed:

- (i) Notice issued in contempt petition No.105 of 2006 is discharged.
- (ii) Notice issued in Civil Application No.178 of 2006 stands discharged.
- (iii) It is made clear that no adjudication is made by this Court as regards the rights of the parties and the observations and findings which are recorded in this order

are only for the limited purpose of considering the question whether it is necessary to initiate action against the contemnors under the Contempt of Court Act, 1971.

- (iv) All contentions of the parties in the pending suit are expressly kept open.

Judge .